

STATE OF MICHIGAN  
COURT OF APPEALS

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KENNETH L. VALENTINE and DARLENE K.  
VALENTINE,

UNPUBLISHED  
January 18, 2005

Plaintiffs/Counter-Defendants-  
Appellees,

v

No. 251362  
Saginaw Circuit Court  
LC No. 01-041555-CK

ANN WILTSE,

Defendant/Counter-Plaintiff-  
Appellant.

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Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of her motion for remittitur. Defendant leased a commercial building from plaintiffs. After plaintiffs built an addition onto the building at defendant's request, defendant left the rented property before the termination of the lease. Plaintiffs sought \$78,400 in unpaid rent, and a jury awarded plaintiffs \$54,800, despite the fact that plaintiffs sold the property at issue some four months after defendant left the property. We reverse and remand.

Remittitur is appropriately granted where the jury's verdict exceeds the amount supported by the evidence. MCR 2.611(E)(1). Unless the trial court abused its discretion, its decision to deny a motion for remittitur will be affirmed on appeal. *Anton v State Farm Mutual Automobile Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999). We give due deference to "the trial court's unique ability to evaluate the jury's reaction to the evidence." *Id.* Here, however, the jury's verdict for the plaintiffs is unsupported by the evidence presented below.

Even where the tenant wrongfully terminates the lease, the landlord still has a duty to make reasonable efforts to mitigate his damages. *Jefferson Development Co v Heritage Cleaners*, 109 Mich App 606, 611; 311 NW2d 426 (1981). An important distinction here is whether the landlord is suing for damages or for unpaid rent; in other words, whether property law principles or contract law principles apply. See *Winshall v Ampco Auto Parks, Inc*, 417 F Supp 334, 336 (ED Mich, 1976). A landlord is required to mitigate his losses where, as here, he is suing for damages under the lease. See *M & V Barocas v THC, Inc*, 216 Mich App 447, 450; 549 NW2d 86 (1996).

Here, defendant notified plaintiffs of her intent to leave their building in August 2001. Plaintiffs responded by advertising that the building was “for lease.” Defendant subsequently re-opened her business in another building in October 2001, and she returned plaintiffs’ keys the following month. She paid rent through the end of 2001. In January 2002, plaintiffs agreed to sell the building at issue to a church, and plaintiffs and the church entered into a land contract for the property in April 2002.

Thus, it is clear that plaintiffs did in fact mitigate their damages, as defendant contends. The evidence was uncontradicted on this crucial point. Pursuant to the terms of the land contract, the church’s monthly payments were \$1,219.47, resulting in a total purchase price of \$170,000 with \$12,000 down. Darlene Valentine testified that, while she and her husband paid property taxes and insurance on the building while defendant occupied it, their land contract with the church made the church liable for these expenses, which were approximately \$1,500 in insurance and \$5,000 in property taxes. Thus, while plaintiffs would have earned \$12,700 annually in rent from defendant after they paid the insurance and taxes on the property, they will receive \$14,640 annually from the church in its payments on the land contract. Not only did they mitigate their damages, they profited from defendant’s breach. For this reason, the trial court’s denial of defendant’s post-verdict motion for remittitur constituted an abuse of discretion. Any award of damages is not supported by the evidence on this record.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio